

1 The Honorable John C. Coughenour
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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE

13 REBECCA COUSINEAU, individually on her
14 own behalf and on behalf of all others similarly
15 situated,

16 *Plaintiff,*

17 *v.*

18 MICROSOFT CORPORATION, a Delaware
19 corporation,

20 *Defendant.*

21 Case No. 2:11-cv-01438-JCC

22 **PLAINTIFF'S MOTION TO SEAL
23 PURSUANT TO LOCAL CIVIL RULE
24 5(g)**

25 **NOTE ON MOTION CALENDAR:**
26 August 9, 2013

1 Pursuant to Local Civil Rule 5(g) Plaintiff Rebecca Cousineau (“Plaintiff”) submits this
 2 Motion to Seal certain documents in connection with her concurrently filed Motion for Class
 3 Certification. Plaintiff will file under seal copies of materials designated as “Confidential” or
 4 “Attorneys’ Eyes Only” by Defendant Microsoft and copies of materials that reference or
 5 otherwise discuss such material. Microsoft designated the above-mentioned information
 6 “Confidential” or “Attorneys’ Eyes Only” under the November 13, 2012 Stipulated Protective
 7 Order entered by this Court (“Protective Order”) (Dkt. 53) and the February 1, 2013 Source
 8 Code Supplement. (Dkt. 57.) Plaintiff will additionally file with the Court under seal an
 9 unredacted version of her Motion for Class Certification, in addition to a redacted Motion for
 10 Class Certification.

11 Plaintiff will file the following documents under seal pursuant to Local Civil Rule 5(g):

- 12 • Exhibits A, B, C, D, E, F, G, H, I, J, N, and O to the Declaration of Rafey S.
 13 Balabanian in Support of Plaintiff’s Motion for Class Certification. These
 14 documents will be described in the Declaration of Benjamin S. Thomassen in
 15 Support of Plaintiff’s Motion to Seal, filed contemporaneously herewith. The
 16 documents were designated “Confidential” or “Attorneys’ Eyes Only” by
 17 Defendant Microsoft, or reference or otherwise discuss documents that were so
 18 designated by Defendant Microsoft.
- 19 • Plaintiff’s unredacted Motion for Class Certification. This document will be
 20 described in the Declaration of Benjamin S. Thomassen in Support of Plaintiff’s
 21 Motion to Seal filed contemporaneously herewith. Plaintiff’s unredacted Motion
 22 for Class Certification will reference and discuss the contents of documents
 23 designated “Confidential” or Attorneys’ Eyes Only by Defendant Microsoft.

24 In accordance with Local Civil Rule 5(g)(3)(A), Plaintiff certifies that she met and
 25 conferred with Defendant Microsoft via telephone conference on July 25, 2013 to discuss
 26 whether the above-mentioned documents should be filed under seal. (*See* Declaration of
 27 Benjamin S. Thomassen in Support of Plaintiff’s Motion to Seal, submitted concurrently

1 herewith, at ¶ 17.) Benjamin S. Thomassen of Edelson LLC for Plaintiff and the putative Class
 2 and Steve Rummage of Davis Wright Tremaine LLP for Defendant participated in the
 3 teleconference. (*Id.*) During the teleconference, both Parties noted that the Protective Order
 4 entered by the Court in this case provides for specific instructions where a party wishes to use
 5 documents marked “Confidential” or “Attorneys’ Eyes Only” to support a motion (such as the
 6 Exhibits detailed herein) and, pursuant to that instruction, agreed that filing the above-referenced
 7 documents under seal was appropriate at this time, with Defendant to file a responsive brief that
 8 provides the requisite showing required by Local Civil Rule 5(g)(3). (*Id.* (citing Dkt. 53).)

9 Good cause exists for allowing Plaintiff to file the above-referenced documents under
 10 seal. As set forth in the Declaration of Benjamin S. Thomassen in Support of Plaintiff’s Motion
 11 to Seal, they will all contain information that has been designated “Confidential” or “Attorneys’
 12 Eyes Only” by Defendant. These documents were produced or generated during discovery
 13 subject to the Protective Order, or otherwise reference information designated by Microsoft as
 14 “Confidential” or “Attorney’s Eyes Only” pursuant to the Protective Order.

15 The Protective Order acknowledges that certain confidential, proprietary, or private
 16 information may be disclosed during the course of discovery, and that the Parties shall follow the
 17 procedures set forth in Local Civil Rule 5(g) for filing documents under seal. Together, Local
 18 Civil Rule 5(g) and the Protective Order require (1) that Plaintiff file material designated or
 19 referencing “Confidential” or “Attorney’s Eyes Only” information under seal, (2) that Plaintiff
 20 move to seal the material, and (3) that Defendant make the showing required under 5(g)(3) to
 21 keep the information under seal.

22 Concurrent with this Motion, Plaintiff will file under seal the above-mentioned exhibits
 23 and an unredacted version of her Motion for Class Certification. Pursuant to Local Civil Rule
 24 5(g)(3), Defendant must respond to this Motion with “a specific statement of the applicable legal
 25 standard for keeping [the] document[s] under seal.”

CERTIFICATE OF SERVICE

I, J. Dominick Larry, an attorney, hereby certify that on July 29, 2013, I served the above and foregoing by causing true and accurate copies of such paper to be filed and transmitted to all counsel of record via the Court's CM/ECF electronic filing system.

Dated: July 29, 2013

/s/ J. Dominick Larry